

**STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION**

IN THE MATTER OF:)	
)	DIVISION OF WATER
)	POLLUTION CONTROL
)	
STONEYBROOK GOLF COURSE)	
LLC)	
)	
)	
RESPONDENT)	CASE NO. WPC 07-0182
)	

DIRECTOR’S ORDER AND ASSESSMENT

NOW COMES Paul E. Davis, Director of the Division of Water Pollution Control,
and states:

PARTIES

I.

Paul E. Davis is the duly appointed director of the Division of Water Pollution Control (hereinafter the “division”) by the commissioner of the Tennessee Department of Environment and Conservation (hereinafter the “department”).

II.

Stoneybrook Golf Course LLC (hereinafter the "Respondent") is a limited liability company licensed to conduct business in Tennessee. The Respondent owns and operates a

golf course and residential development (hereinafter the "site") in Columbia, Tennessee. Service of process may be made on the Respondent through its registered agent, Randy Hardison, at 506 N. High Street, Columbia, TN 38402.

JURISDICTION

III.

Whenever the commissioner has reason to believe that a violation of the Water Quality Control Act of 1977 (hereinafter the "Act"), Tennessee Code Annotated (T.C.A.) § 69-3-101 et seq, has occurred or is about to occur, the commissioner may issue a complaint to the violator and may order corrective action be taken pursuant to T.C.A. § 69-3-109(a) of the Act. Further, the commissioner has authority to assess civil penalties against any violator of the Act, pursuant to T.C.A. § 69-3-115; and has authority to assess damages incurred by the state resulting from the violation, pursuant to T.C.A. § 69-3-116. Department rules governing general water quality criteria and use classifications for surface waters have been promulgated pursuant to T.C.A. § 69-3-105 and are effective as Chapters 1200-4-3-4 of the *Official Compilation: Rules and Regulations of the State of Tennessee*. Pursuant to T.C.A. § 69-3-107(13), the commissioner may delegate to the director of the division any of the powers, duties, and responsibilities of the commissioner under the Act.

IV.

The Respondent is a "person" as defined by T.C.A. § 69-3-103(20) and, as herein described, has violated the Act.

V.

Little Bigby Creek, referred to herein, is “waters of the state” as defined by T.C.A. § 69-3-103(33). Pursuant to T.C.A. § 69-3-105(a)(1), all waters of the state have been classified by the Tennessee Water Quality Control Board for suitable uses. In accordance with Department Rule 1200-4-4, “Use Classifications for Surface Waters,” this water body has been classified for the following uses: fish and aquatic life, recreation, irrigation, and livestock watering and wildlife.

VI.

Pursuant to T.C.A. § 69-3-108, Rule 1200-4-7-.04 requires a person to submit an application prior to engaging in any activity that requires an Aquatic Resource Alteration Permit (hereinafter the “ARAP”) that is not governed by a general permit or a § 401 Water Quality Certification. No activity may be authorized unless any lost resource value associated with the proposed impact is offset by mitigation sufficient to result in no overall net loss of resource value.

FACTS

VII.

On March 28, 2006, the division issued Aquatic Resource Alteration Permit NRS04.287 to the Respondent authorizing the withdrawal of water from Little Bigby Creek. The permit allows for withdrawal of water from the creek until the USGS real time data gauge at Carter’s Creek reads a flow of 1.17 CFS (Cubic Feet per Second) or lower.

VIII.

On July 31, 2007, the division received a complaint from the Tennessee Wildlife Resource Agency (TWRA) regarding the unauthorized withdrawal of water from Little Bigby Creek for the irrigation of the Stoneybrook Golf Course. That same day, division personnel investigated the complaint and documented that the Respondent was pumping water from the creek into a pond located at the site. The flow reading at the USGS real time data gauge at Carter's Creek was approximately 0.35 CFS, well below the cut-off level specified in the Respondent's permit. Division personnel discussed the matter with the Respondent's employee at the site, Mr. Carroll Strange, who claimed to have no knowledge of the permit's requirements. Mr. Strange was advised to obtain a copy of the permit and to become familiar with its requirements in order to prevent further violations from occurring. The Respondent's employee informed division personnel that the pump withdrawing water from the creek would be turned off, as another pond was being filled with municipal water, which would be used for irrigation purposes.

IX.

On August 3, 2007, the division issued a Notice of Violation (NOV) to the Respondent for the unauthorized water-withdrawal ARAP violation observed during the July 31, 2007, complaint investigation.

X.

On August 14, 2007, division personnel conducted a follow-up inspection at the site. It was observed that water was again being pumped from Little Bigby Creek while it

was at low flow conditions, in violation of the terms and conditions of ARAP number NRS04.287. As before, the unauthorized water withdrawal was being pumped into a pond for use in irrigating the golf course.

XI.

On August 22, 2007, the division issued a second NOV to the Respondent for continuing to perform un-authorized water withdrawals from Little Bigby Creek in violation of the terms and conditions of ARAP number NRS04.287, as was documented during the August 14, 2007, follow-up inspection. The NOV further informed the Respondent that willfully violating or refusing to comply with the Act could constitute the commission of a misdemeanor or even a felony under state law.

XII.

During the course of investigating this matter the division incurred damages totaling FOUR HUNDRED SIXTY-NINE DOLLARS AND FORTY-THREE CENTS (\$469.43).

VIOLATIONS

XIII.

By performing un-authorized water withdrawals from Little Bigby Creek and by violating the terms and conditions of an existing ARAP the Respondent has violated T.C.A. §§ 69-3-108(a)–(b), 114(b), which state in part:

§ 69-3-108(a):

Every person who is or is planning to carry on any of the activities outlined in subsection (b), other than a person who discharges into a publicly owned treatment works or who is a domestic discharger into a privately owned treatment works, or who is regulated under a general permit as described in subsection (j), shall file an application for a permit with the commissioner or, when necessary, for modification of such person's existing permit.

§ 69-3-108(b):

It is unlawful for any person, other than a person who discharges into a publicly owned treatment works or a person who is a domestic discharger into a privately owned treatment works, to carry out any of the following activities, except in accordance with the conditions of a valid permit:

- (1) The alteration of the physical, chemical, radiological, biological, or bacteriological properties of any waters of the state;
- (4) The development of a natural resource or the construction, installation, or operation of any establishment or any extension or modification thereof or addition thereto, the operation of which will or is likely to cause an increase in the discharge of wastes into the waters of the state or would otherwise alter the physical, chemical, radiological, biological or bacteriological properties of any waters of the state in any manner not already lawfully authorized;

§ 69-3-114(b):

In addition, it is unlawful for any person to act in a manner or degree which is violative of any provision of this part or of any rule, regulation, or standard of water quality promulgated by the board or of any permits or orders issued pursuant to the provisions of this part; or fail or refuse to file an application for a permit as required in § 69-3-108; or to refuse to furnish, or to falsify any records, information, plans, specifications, or other data required by the board or the Commissioner under this part.

ORDER AND ASSESSMENT

XIV.

WHEREFORE, pursuant to the authority vested by T.C.A. §§ 69-3-107, 109, 115–16, I, Paul E. Davis, hereby issue the following ORDER AND ASSESSMENT to the Respondent:

1. The Respondent shall henceforth comply with the terms and conditions of ARAP number NRS04.287 throughout the remainder of its effective period, which ends March 27, 2011.
2. The Respondent is hereby assessed a CIVIL PENALTY in the amount of TWENTY THOUSAND DOLLARS (\$20,000.00), payable as follows:
 1. The Respondent shall, within 30 DAYS of receipt of this Order and Assessment, pay to the division FIVE THOUSAND DOLLARS (\$5,000.00).
 2. The Respondent shall pay FIFTEEN THOUSAND DOLLARS (\$15,000.00) to the division in the event the Respondent fails to comply with Item 1 above, to be paid within 30 days of default.
3. The Respondent shall pay to the division DAMAGES in the amount of FOUR HUNDRED SIXTY-NINE DOLLARS AND FORTY-THREE CENTS (\$469.43).

ORDER AND ASSESSMENT

XIV.

WHEREFORE, pursuant to the authority vested by T.C.A. §§ 69-3-107, 109, 115–16, I, Paul E. Davis, hereby issue the following ORDER AND ASSESSMENT to the Respondent:

1. The Respondent shall henceforth comply with the terms and conditions of ARAP number NRS04.287, which expires March 27, 2011.
2. The Respondent is hereby assessed a CIVIL PENALTY in the amount of TWENTY THOUSAND DOLLARS (\$20,000.00), payable as follows:
 1. The Respondent shall, within 30 DAYS of receipt of this Order and Assessment, pay to the division FIVE THOUSAND DOLLARS (\$5,000.00).
 2. The Respondent shall pay FIFTEEN THOUSAND DOLLARS (\$15,000.00) to the division in the event the Respondent fails to comply with Item 1 above, to be paid within 30 days of default.
3. The Respondent shall pay to the division DAMAGES in the amount of FOUR HUNDRED SIXTY-NINE DOLLARS AND FORTY-THREE CENTS (\$469.43).

The Respondent shall otherwise conduct business in accordance with the Act and rules promulgated pursuant to the Act.

The director of the Division of Water Pollution Control may, for good cause shown, extend the compliance dates contained within this Order and Assessment. In order to be eligible for this time extension, the Respondents shall submit a written request to be received a minimum of 30 days in advance of the compliance date. The request must include sufficient detail to justify such an extension and include at a minimum the anticipated length of the delay, the precise cause or causes of the delay, and all preventive measures taken to minimize the delay. Any such extension will be in writing.

Further, the Respondents are advised that the foregoing Order and Assessment is in no way to be construed as a waiver, expressed or implied, of any provision of the law or regulations. However, compliance with the Order and Assessment will be one factor considered in any decision whether to take enforcement action against the Respondents in the future.

Issued by the director of the Division of Water Pollution Control on this 29th day of September, 2007.

A handwritten signature in black ink, appearing to read "Paul E. Davis", is written over a horizontal line.

PAUL E. DAVIS, P.E.

Director, Division of Water Pollution Control

NOTICE OF RIGHTS

Tennessee Code Annotated §§ 69-3-109, 115, allow any Respondent named herein to secure review of this Order and Assessment. In order to secure review of this Order and Assessment, the Respondent must file with the Department's Office of General Counsel a written petition setting forth each of the Respondent's contentions and requesting a hearing before the Water Quality Control Board. The Respondent must file the written petition within thirty (30) days of receiving this Order and Assessment. The petition should be sent to: "Appeal of Enforcement Order, TDEC-OGC, 20th Floor L & C Tower, 401 Church Street, Nashville, TN 37243-1548".

If the required written petition is not filed within thirty (30) days of receipt of this Order and Assessment, the Order and Assessment shall become final and will be considered as an agreement to entry of a judgment by consent. Consequently, the Order and Assessment will not be subject to review pursuant to T.C.A. §§ 69-3-109, 115.

Any hearing of this case before the Water Quality Control Board for which a Respondent properly petitions is a contested case hearing governed by T.C.A. § 4-5-301 et seq of the Uniform Administrative Procedures Act, and the Department of State's Uniform Rules of Procedure for Hearing Contested Cases Before State Administrative Agencies. The hearing is in the nature of a trial before the Board sitting with an Administrative Law Judge. The Respondent may subpoena witnesses on its behalf to testify.

If the Respondent is an individual, the Respondent may either obtain legal counsel

representation in this matter, both in filing its written petition and in presenting evidence at the hearing, or proceed without an attorney. Low-income individuals may be eligible for representation at no cost or reduced cost through a local bar association or legal aid organization.

Payments of the civil penalty shall be made payable to the "Treasurer, State of Tennessee," and sent to the Division of Fiscal Services - Consolidated Fees Section, Tennessee Department of Environment and Conservation, 14th Floor L&C Tower, 401 Church Street, Nashville, Tennessee 37243. All other correspondence regarding this matter should be sent to Paul E. Davis, Director, Division of Water Pollution and Control, Tennessee Department of Environment and Conservation, 6th Floor L & C Annex, 401 Church Street, Nashville, TN 37243. Please write your case number on all payments and all correspondence concerning this matter.